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Legal clinics and better trained lawyers...

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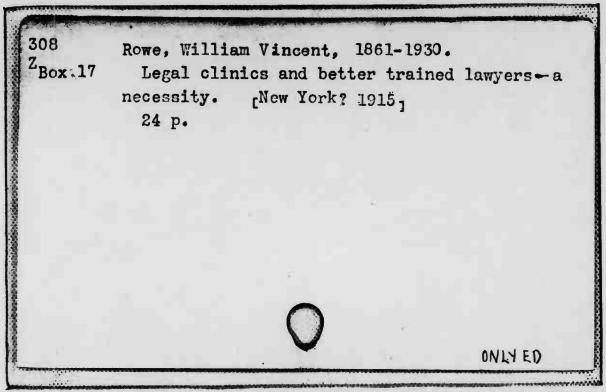

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Legal Clinics and Better Trained Lawyers—A Necessity

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LEGAL CLINICS AND BETTER TRAINED LAWYERS—A NECESSITY.

A MEMORANDUM

(Prepared, primarily, for Columbia University and New York State—but applicable generally.)

BY WILLIAM V. ROWE.

This is a sound idea, presented from the right point of view, but the success of its practical development in a law school will depend absolutely on the existence of genuine enthusiasm on the part of both faculty and students. Without enthusiastic belief in and devotion to the idea, the effort to work out satisfactory results will not be worth while. That enthusiasm will, in turn, depend in large measure on a comprehensive knowledge and grasp of existing conditions and a full appreciation of their significance and tendency.

As this memorandum has been prepared for the eye of the general professional reader as well as for that of the law school expert, it contains a fullness of introductory and explanatory detail which otherwise would have been unnecessary, and which the specialist may conveniently overlook. To the mind of the expert, the suggestion itself will carry conviction without illustrative or argumentative support. Training in a legal clinic is not a startling novelty. It has been in use for years at Copenhagen, and has recently been adopted by the University of Minnesota. In seeking to overcome possible conservatism in New York, we are simply working in virgin soil which may require a little preparatory treatment.

We must never forget that lawyers will always be our governing class in America. Fully two-thirds of our presidents and senators and more than one-half of our congressional represen-

tatives, and of the members of our state legislatures, have been, and probably always will be, lawyers, and, of course, our courts, with a few unimportant exceptions, are wholly recruited from members of the bar. In this condition there is nothing anomalous. On the contrary, it is the natural and necessary state of affairs in a common-law country, under a written constitution. Nevertheless, viewed in their relative proportions, these facts must give impressive importance to any consideration of the particular subject before us. They are facts, indeed, which, emphasized by the great *alien* element now crowding in upon the profession, become immediately decisive, and distinctly fix the responsibility and measure the duty of the American law school. We are quite justified in insisting that the maintenance and sound development of the Anglo-Saxon law of the land—upon which alone must rest all true liberty and social progress—are now plainly at stake. The year of Magna Charta is a good time to think of these things.

Accepting also, as we must, the further fact that the preliminary or probationary practical training for the bar, through the familiar office studentship or clerkship, deemed so essential in all common-law communities, has been largely lacking with us for the last twenty years, and that what the law office has refused the law school has failed to supply, the question immediately presents itself, What are we now going to do about these matters? for do something we must, and quickly. Certainly the law schools can no longer, with ever-increasing complacency, fold their robes about them and withdraw from touch with living problems. In these times and in our common-law communities they are not any longer to be permitted to take themselves seriously as cloisters set apart merely for creating or embalming legal literature. They have, on the contrary, by a process of evolution, become a great moral and political agency, affected with a public interest—the sole instrumentality for the nourishing of the spirit of the profession and for the right training of our great governing class, now so largely made up of foreign and hostile blood, which cannot otherwise be trained for necessary public service.

Although no plan can be worked out off-hand and nothing can be accomplished in a minute, it is evident that, on this general subject, we have had enough of mere debate and that the time is now ripe for action.

Let us bear in mind, however, that we are considering a great and broad question of training rather than a comparatively incidental question of instruction in practice and procedure, and that we are laying our whole stress on the *training*, for it may be said at once that a knowledge of practice can be acquired *only by practicing*, and that it will be absorbed quickly and naturally as an incident and a result of right training. It is folly to waste time in the effort to teach practice in the classroom in the customary manner—a folly almost as pronounced as the continued encouragement of "moot courts." Indeed, practice, as such, cannot properly be made a separate subject or course. And, it may be added, the new practice act and the voluminous rules, if adopted in New York, will furnish no easy or royal road to its complete mastery.

In his extraordinarily able and comprehensive report to the Carnegie Foundation on *The Common Law and the Case Method in American University Law Schools*, Professor Redlich takes occasion to say (at p. 38) that no law school can replace or supply

> "those particular qualities which practice alone can give. No theoretical instruction in the law," he insists, "whether in a country of codified law or in a country of common law, can do this."

And, in referring to what is learned in a law office, he again says (at p. 40):

> "It must, of course, again be emphasized that this knowledge can never be gained in any school, anywhere, any more than any law school of Europe or America can teach the future lawyer the ethics of the legal profession, or the peculiar instinct (*takt*) of the successful lawyer or judge. In this calling, as in every other, only the direct atmosphere of daily professional life can furnish to the beginner certain experiences and qualities which are of great practical importance."

This familiar idea of the clinic, to be adapted to the teaching of law, by bringing the law office, with this "direct atmosphere of daily professional life," to the law school and the student, inasmuch as the student can no longer go to the law office—a plan apparently not brought to the attention of Dr. Redlich—is

now seriously suggested for general adoption, with a view of filling this needless and dangerous gap in legal training.

A constant dallying, procrastination and "muddling," in and about its own peculiar affairs, is the regrettable, but acknowledged and characteristic record of the legal profession. Why it is, however, that we have for so many years lagged behind all other professions, and even the manufacturing and commercial industries of the country, in this matter of providing systematic and experienced clinical and practical instruction, all laymen and nearly all lawyers find it utterly impossible to understand. Medicine, surgery, the ministry, the arts, architecture, and engineering have always supplied this preliminary practical, or clinical, school experience, and, finding the ordinary and vocational schools often lacking in right training for their work, even the various manufacturing and business organizations have developed their own classes for clinical instruction. University graduate courses in "business" and in commercial activities, with outside clinical apprenticeships in business-houses, are also being established. Indeed, municipal departments have sometimes organized such schools. Nevertheless, for our delay and conservatism there is really some excuse, inasmuch as we did, in our offices, until twenty years ago, furnish to students opportunities for what was made to serve the purpose of clinical instruction. But how crude and unsystematic it all was, and how far behind the work of the other professions; and now even that is a thing of the past. Students are no longer welcomed in the best offices, especially in the cities, and few such opportunities exist for preliminary practical work.

The general question of practical instructors and practical instruction was covered by Dean Stone's admirable and suggestive paper before the American Bar Association in 1911,[1] and the Section of Legal Education of that association, including the Conference of State Bar Examiners and Law School Teachers, debated at length last year (1914) the whole subject of office instruction and the training of students in practice. Particular reference should be made to the paper of Mr. Carson, of Philadelphia, and the address of Dean Vance of the University of Minnesota.[2]

[1] 36 A. B. A. 768.

[2] 39 A. B. A. (1914), 887-900; 799-807.

At that meeting, however, too much attention was directed to the mere question of teaching "practice" by office work, or by active practitioners. That is not the right point to aim at. The real need, and especially is this true in New York, is education, training and discipline in the conduct of professional life—the development of what may be called the professional character, spirit and savoir faire, in the only possible way, that is to say, by placing the student in a proper law office, which we will call *a clinic, under systematic instruction and training,* and in constant touch with reputable practitioners of high character, who, in a general practice, are applying the law in the concrete, as a living force, to the living problems of our people. The student thus *lives* in an atmosphere of the law, and absorbs the spirit of its practice, day by day, in the course of actual dealings between lawyer and client. As in the case of the Inns of Court and the English barristers' and solicitors' offices, the student unconsciously develops in such an atmosphere, under the influence and contact of character and personality working in the harness of the law, the trained professional conscience and practical sense—the instinct for right and the consciousness of wrong, which constitute the true spirit of the profession, and lead, regardless of rewards, to that necessary self-sacrificing devotion to the vindication of the good and the true and the punishment of the evil and the false, upon which, with us, must largely rest the welfare of our profession and much of our advancement in social development and organized government. This is the spirit of the real law office which the law schools must now supply. In learning in this way *how* to practice and how to deal with clients, as the principal thing, the student learns technical practice and procedure as the machinery and a mere incident of his work. Knowledge of practice cannot be acquired by any other method.

In all this there is no false sentimentality. It is all serious matter of fact and sober common sense. The profession at large, the judges, and the bar examiners will have to wake up to the real situation, and they and the law schools will have to perform their full duty. Throughout the country, on this question of legal education and qualifications for the bar, there has been too much dallying due to politics, to a laissez-faire spirit, and to an imaginary or assumed public opinion as to everybody's right to practice

law. Although this matter of legal training lies at the root of all government in America, the fact is, there is no public knowledge or sentiment whatever on the subject. Of course, there ought to be and will be, and, when it does appear, public opinion will be overwhelmingly in favor of the strictest training and standards. The cheap lawyer-politician will be swept off his feet. He now talks glibly about Abraham Lincoln and equal rights for all at the bar, forgetting that, with modern educational facilities, all our real Abraham Lincolns are in these days college-bred men. Clearly, in view of the existing confusion among the States and of the low standards, we must, as soon as may be, have standardization of qualifications for admission, and higher educational standards, both preparatory and professional (preferably both a college and law school degree), with a broader and better training, and a consequent desirable reduction in the number of lawyers. There must be a stricter character examination, both before entrance upon a clerkship or law school course and before admission to the bar, with paid investigators regularly employed. No candidate should be permitted to make more than two trials of the examinations for the bar. Nothing, however, can be accomplished unless (by constitutional amendments, if need be) we first destroy the possibility of constant irresponsible and ignorant legislative tinkering, and establish an expert supervisory educational body which shall regulate all legal education and qualifications for the bar. Then we must secure standardization and uniformity, in the only practical way, through the creation of such a *federal* supervisory body, which shall fix the highest standards, and shall control the qualifications for and admissions to the *federal* bar. The States will thereupon be obliged to fall in line. We have no time to discuss these measures now, but every lawyer worth his salt knows that we have got to come to them or to something equivalent to them. We must promptly get out of the ruts of our fixed routine, for it no longer meets and satisfies the needs and conditions of the hour. The legal clinic will be our first step.

Each community, however, must adapt itself and its remedial methods to its own peculiar problems and surroundings. Many of us have been sorely distressed by some of the conditions in The City of New York, and have been considering our particular

problems for many years. The story is not new. Nevertheless, it is clear that it is not generally realized how completely our practice has changed in the last twenty years and how radically the changes have shortened the vision and limited the experience and opportunities of the bar at large and, as a consequence, of the growing body of students—limitations which have emphasized in vast measure the commanding necessity for the broadened and extended law school instruction here advocated.

In our city, litigation in the better class of offices has almost ceased, or has sunk into comparative insignificance as an element of practice. Our former advocates and barristers have become chiefly solicitors, and the desk-work of the solicitor—the direct advisory guidance of business and the settling of controversies —has completely supplanted the work of the litigating office Corporations and corporation law, and business, now dominate our practice. It is a permanent tendency. Intense specializing has resulted. There is no general practice in real estate law, and comparatively little in that of wills, trust estates and shipping. Since the late '80's and early '90's, corporation and business reorganizations and consolidations, the dominance of business, with its insolvency and bankruptcy problems, and the change from sailing-ships to steamships have thus revolutionized our work. There has been a constant falling off in all important classes of litigation, with an almost total loss of the substantial and useful old-fashioned commercial and admiralty litigation, involving shipping, insurance, commercial contracts, sales, bills and notes, and general business transactions, any residue of which now goes to boards and committees of arbitration on the exchanges. Those committees, with the trust companies, title companies, and companies for organizing and caring for the routine legal affairs of corporations, have destroyed the real estate practice (of inestimable value to students), and a large part of the practice arising from wills, decedents' estates, trust estates, corporation routine and general business. And even the tort litigation, much of it of little practical value, is being rapidly swept away by the Workmen's Compensation Laws and other modern social and regulatory legislation.

We are, perhaps, too near these changing conditions to find a true perspective, or to formulate a final judgment as to the future

and as to the full needs of the profession and the schools to meet the changed requirements of our communities. We do know, however, that the American lawyer must forever remain an all-round lawyer, a full-fledged, fully-equipped barrister as well as a solicitor, completely prepared and able to deal directly with the people concerning all of their affairs. No lawyer is qualified to advise in relation to controversies and their adjustment, or in relation to the general transactions of business, unless he has had ample experience in general litigation. Nothing can take the place of such experience. It is also true that experience in real property and general commercial and admiralty law is almost as essential to his equipment. With the loss of such experience, what will this and the next generation of lawyers amount to, and what will be the effect on the development of the law itself? What functions must the law schools assume in that behalf?

The general introduction, since 1880, of telephones, stenographers, typewriters, dictating and copying devices, and improvements in printing, in connection with these changes in practice already noted, have made students not only unnecessary but actually undesirable in most of the active law offices. Plainly speaking, they are considered to be a nuisance. The fully-qualified lawyer, able to participate in the responsible conduct of business and to meet clients, is alone needed and sought for. As a result, the student or junior clerk has lost the former ample opportunities, when preparing cases, or aiding in court, or when acting as messenger from one office to another, for those invaluable personal contacts and conferences with older men and leaders at the bar which always served as the most stimulating and important elements in the training of a lawyer. Add to that the further loss involved in the relief of the student from the task of copying papers coming from the hands of master-draughtsmen in the profession, from which service came a large part of the most useful training, and we begin to realize the heavy handicap of the new generations of lawyers. These various tasks of the student meant constant service in the best legal atmosphere, and showed to him, from hour to hour, the law and lawyers in action as living forces. His principles and standards of conduct were learned and absorbed unconsciously.

One of the worst results of these changes is the almost total loss of general contact and acquaintanceship at the bar, even among lawyers themselves—a most essential element for the preservation of professional solidarity and the maintenance of the true professional spirit and standards. Lawyers no longer know the members of their own profession, and students, as already pointed out, are deprived of nearly all opportunities for beneficient and instructive intercourse with the members of that bar to which they are about to be called. Acquaintance and fellowship are largely limited to college-mates, to associates in clubs and societies, and to the particular home and office associates—an extremely narrow circle naturally leading to the development of cliques.

These conditions, generally familiar, are still further aggravated for us in The City of New York by the character of our population.

In the continental United States, according to the last census, there were 114,704 lawyers, or one for every 802 of the population. In our city, there were 10,563, or (omitting the few women lawyers) one for every 606. Over *fifteen per cent.* (1,693) of our male lawyers are *foreign born* and over fifty per cent. (5,506) are either *foreign born or of foreign or mixed parentage.* This general condition prevails in all our large cities, but, with us in New York, at the country's gateway, it is specially burdensome.[3] Among this foreign stock we find some of our best scholarship and our most thirsty seekers for knowledge and light and material progress—a thirst, however, which, only too frequently, has slight relation to those qualities having to do with morals and character. With due regard for the common good, we feel a keen and sympathetic interest in the free development and in the general welfare of these people, because, with proper education as to the moral, social and legal significance of our institutions, based on the obligation of all to serve all for the benefit of all, they will, as the generations come and go and the races mix with one another more and more, become one of our most valuable assets. But sound and persistent training they must have, and that, constantly. As it is, they are now, although wholly untrained, receiving

[3]See a useful compilation of statistics in the West Publishing Company's "Docket" for March, 1915, at p. (1348).

and accepting in crowds the full responsibilities of American citizenship. There lies the danger, especially as there is great racial segregation and solidarity, and even continuous lack of any adequate knowledge of our language.

As an affair of the present day, therefore, our problem thus becomes a peculiar and difficult one. This foreign element is now largely of the blood of southern, eastern and central Europe—people whom we are beginning to meet, in a way to attract our attention, on our streets, in business, in politics and in the professions. With brilliant exceptions, they have few traditions (speaking generally) except the objectionable ones of a downtrodden subject-race, in constant war with oppressive power and authority, the defeat of whose purposes, from day to day, has, in the past, been deemed by them both praiseworthy and justifiable. By inheritance more or less hostile to all authority, and with little inherited sense of fairness, justice and honor as we understand them, the earnest striving for knowledge of many of these people is centered mainly upon their own selfish advancement, in a material way, under the "New Freedom," which for them frequently means license. So much for their inherited character and point of view. Of equally disturbing import, however, is the fact that their legal traditions, such as they have, all rest upon a Continental "ready-made" code or system of law, handed down by authority, and that they have no inherited conception of, or capacity to understand, the common law, as the people's law—a law developing from special instances in the life of the people, and growing as a living thing with the unfolding of that life. What are we to do in the law schools with this special problem? How are we to preserve our Anglo-Saxon law of the land under such conditions? This is the stock from which our untrained lawyer-politicians will be drawn, and are, in a measure, now being drawn, to flood our legislatures. Without necessary knowledge or training or correct instincts, without any inherited sympathy with, or understanding of, our institutions, and, indeed, frequently with inborn hostility to all law and order, they will have the votes and the power (and to a large extent have them already) to tinker irresponsibly, not only with our practice and procedure and the qualifications for the bar itself (witness, Massa-

chusetts' recent experience),[4] but also with the most vital portions of our substantive law, and even with our fundamental constitutional provisions.

We may assume that New York, as the greatest city in the world and its greatest cosmopolitan centre, both actually and potentially, will naturally be the home of the greatest university of our times, and, above all, of the most important school of law, a school not necessarily like other similar institutions, but, rather, one designed to satisfy these special needs of our extraordinary aggregation of races and individuals. Plainly, Columbia is appointed to this great place and service. Due to these existing conditions, creating something in the nature of an emergency, her immediate duty is to develop for her law students the same comprehensive and exceptional clinical opportunities which have for years been open to her medical students, to the end that the training of our lawyers and governing class, in legal traditions and culture and in the conduct of professional life, may, after an interruption of nearly twenty years in the opportunities for general office experience, once more proceed along right lines, under modernized systematic instruction and supervision. This will be a true public-welfare service.

Little can be accomplished, however, without the hearty cooperation and interest of the students themselves, the third year men in particular. Great pains must be taken to excite their interest in the work. To that end, it must clearly appear to be to their advantage. They must be made to see that the instruction will be so much greater in amount, because of its singleness of purpose and its systematic and warmly interested and sympathetic nature, and the knowledge and training so much broader and deeper and so much more vital, that there can really be no comparison between such a genuine clinical course and the doubt-

[4]See *In re Bergeron*, 220 Mass. 472 (Mass. Supreme Judicial Court, March 4, 1915). Also, Mass. Act of May 11, 1915, entitled "An Act Relative to Admission to the Bar of Attorneys-at-Law," reducing the general educational qualifications for the bar to a *two-years' evening high school standard*—the result of a movement, covering over *five years of agitation for lower standards*, strongly promoted by Mr. Martin M. Lomasney, an influential ward leader of Boston, because, as he expressed himself in a letter to the bar examiners, January 12, 1915, such a measure or rule was calculated to maintain "a *proper standard* and give every applicant an *equal chance*"!

ful, uninteresting status and opportunities of a student or junior clerk in an ordinary law office of the present day.

Then, too (and it may be said that there is reason for speaking with confidence on this point), the courts and bar examiners will readily *accept such a course as the full equivalent of, and a complete substitute for, the clerkship now prescribed by the rules* governing admission to the bar, because it will be, in effect, post-graduate work, and will obviously produce infinitely better results than such a clerkship.[5] That fact alone will settle the matter in the mind of the average student, and will lead to his acceptance of the course and his full support of the clinic.

Next, the clinic may, at pleasure, be made practically the whole proposed *fourth year course* now under debate, for, as we have seen, it can also be made the year of clerkship, so that nothing will be lost and much will be gained in students' time. Of course, it *can* be worked into the third year, if no fourth year be provided. To that end, much time can be saved by abandoning the profitless, wasteful and dreary "moot court" work, and by arranging evening hours for a part of the clinic, especially, as in Copenhagen, in connection with the legal aid work to which we are about to refer. Naturally, however, we should like to see the clinic made the basis and reason for the immediate establishment of the fourth year.

Possibly, also, the students' time may and will be saved by adopting the familiar suggestion to shorten the college course, and by transferring the whole, or a part, of such courses (if now given) as those on Constitutional Law, Constitutional History, Government, International Law, Natural Law and similar subjects to the college course itself. So, too, courses which, due to permanent and fundamental changes in our law and practice, have ceased to be of much practical use to the average student, and have acquired rather an historical and literary flavor, may be greatly shortened.

The clinic can also be made the medium for what Professor Redlich terms (p. 45) "a certain general summing-up and survey of the law." This would cover all the practical and useful courses of the preceding three years, and could, perhaps, be more readily

[5]See, for example, the propositions on this general head before the American Bar Association, 39 A. B. A. (1914) at pp. 822; 825-827.

and satisfactorily developed by the professor in charge of the clinic, as a part of clinical "demonstrations," than in any other way. That would, however, be quite apart from any additional course in general "Jurisprudence."

Like a surgical or medical clinic, but in much greater degree, this clinical course will mean earnest, red-blooded talks and "demonstrations," in a classroom, with close analytical arguments between lawyer and student, concerning the concrete living cases actually being handled by the students from day to day. Let the imagination play over the extraordinary opportunities thus presented for the best and most useful work. Later on, we shall again comment on this procedure.

For such a clinic we shall need large office organizations, with a very general practice, and with no restrictions upon the kind, value, or amount of business, provided, always, it be honest and meritorious.

In that behalf, we must always keep before us the fact that it will be the purpose of the clinic, not merely to educate in practice and to develop, in general, the true professional spirit, but, in the interest of the commonwealth and of good citizenship, to lay the foundations in the individual student for sound personal character and business honor, to make clear, in the concrete, the lawyer's duty to society and to his fellow-men, and, in so doing, to combat the idea, prevalent for two generations past, that the law is simply one means, like any trade, of making a living, and is freely open to the world without serious restrictions as to qualifications, and with no special resulting social obligations. Among other things, the student must understand the lawyer's duty, like the doctor's, to give his best service to the poor—to a non-paying clientage. In short, it must be made possible for the student to absorb and acquire from this clinical experience correct standards as to business honor, civic duty, charity and social service.

In looking about us for ways and means to satisfy these clinical needs, our first thoughts naturally turn to *the established legal aid work*. Through the earnest service and self-sacrificing interest of Mr. Arthur von Briesen, whose great abilities and warm-hearted benevolence have, as we all know, literally been showered upon that work for many years, it was long since made known to us that actual experience had demonstrated the prac-

ticability of this sort of clinical co-operation and instruction.' Apparently, the first clinic of this kind to be organized was that at Copenhagen, visited by Mr. von Briesen as long ago as 1907 —an institution managed by the Copenhagen Legal Aid Society jointly with the University of Copenhagen. This clinic is partly supported by public funds, and is conducted by the foremost lawyers and judges of the community, seven lawyers and one judge serving each evening, different individuals volunteering on different evenings, assisted in all cases by the law students of the university. This service of *students* and the *evening sessions* are the striking facts.

In his report of his visit, Mr. von Briesen says:

> "The official name of the society is 'Studentersamfundets Retshjaelp for Ubemidlede,' which, translated, means substantially, 'The Students' Association for Securing Legal Aid to the Poor,' the fact being that the society sprang from the University Law School, the body which supplies the students and the graduates for performing the most important work. The confidence which these gentlemen receive at the hands of applicants is naturally very great; their decisions are taken without a murmur, and terminate what otherwise might become much needless controversy. The influence for good thus exercised cannot be overestimated.
>
> "So far as our New York Legal Aid Society is concerned, the principal lessons to be drawn from the excellent work done at Copenhagen are:
>
> "(1) That *evening sessions are of extreme value,* because they enable the working people to present their cases during their hours of leisure, and also because they would permit some of our best-known lawyers and *our law students to assist in advising and analyzing the cases* brought to their attention.
>
> "(2) *The advisability of having our law schools officially interested in our work. Nothing can equal in importance the value to a law student of actual contact with litigants and their skilled advisers such as the office of the Legal Aid Society furnishes.* There are no 'moot' cases in these offices, and there is a great variety of questions, some of considerable intricacy, the solution of which will be *of more value to the students* even than to the party who deems himself aggrieved."[6]

[6] 5 Legal Aid Review (1907), 26.

More recently (in 1913-14), the University of Minnesota has made a similar happy experiment with such a clinic—so far as known, the first in this country. In his luminous and interesting report upon its successful operation, however, Dean Vance, to whom all credit is due, seems to indicate[7] that it is devoted primarily to the teaching of *practice* (but, in effect, it accomplishes more than that, as we shall see), and states[8] that it is limited to charitable "Legal Aid Bureau" work and to cases not involving over $100—the cases, in fact, seldom exceeding $50 in amount involved—with the object, apparently, of not competing with lawyers in regular practice. That means mere justice of the peace work, and will not satisfy the needs of our community. He does not refer to any classroom work based on that in the clinic. For the purposes of that clinic, a local legal aid bureau was organized in Minneapolis, and the competent young lawyer placed in charge of the office, with an assistant, was then made an instructor in practice in the law school. Ample practice was secured at once, a down-town office was opened, students of the third year, about sixty in number, were, in accordance with a posted calendar or schedule, sent there in "squads of four" for one week at a time, serving from one to six o'clock each afternoon, and great enthusiasm and successful results have followed, each student coming to the bar, as Professor Vance declares, *"not only a better lawyer but a better citizen."* That is to say, the clinic necessarily trains in character as well as in practice. This clinic is still (1915) proceeding "promisingly." It results in each student's securing from two to three weeks of clinical work during the year, in addition to the time spent in completing particular proceedings which have been started and not finished during the prescribed period. Such a clinical experience must and will be greatly enlarged for our purposes here in New York. It clearly shows, however, the need of the fourth year—in which Dean Vance thoroughly believes. All honor to him for this advanced work.

For *our* clinic, then, we must have an unlimited general practice, and must practice in earnest. There will be no objectionable competition with the profession at large, because the clinic will be a

[7] 39 A. B. A. (1914) 801 *et seq.*

[8] At pp. 804 and 806.

regular law office (and not the university itself in disguise), and will charge full fees for all its work, except the purely legal aid and charity cases. The corporation (the university) will not be open to the charge of practicing law, because its work will be wholly educational and benevolent, and the practicing will be solely in the hands of a regular and responsible law office having merely its own relations with the university.

The uptown location and the size of the classes of the modern law school are not disturbing factors. Business and residences are also moving uptown, and the subways and other transportation conveniences will make communication with the courts, clients, witnesses, and others sufficiently easy and agreeable. To provide clinical work for large classes is simply an ordinary problem of administration. Our primary needs will be two—first, an adequate *plant,* including a classroom and large law-office space, with proper equipment; second, *business,* of the most varied and general character and in large amount. The third or fourth year class will then take care of itself in the clinic. The university, as a financial and physical proposition, can presumably find the necessary room, and there are ways of finding and developing the business.

A large classroom will be needed, separate and apart from the office suite and space, because the clinical instruction must, as we have said, necessarily include general classroom work, with "demonstrations" of current clinical problems, as well as individual instruction and guidance in each case in hand. This daily "demonstration", or case analysis and debate in the classroom, of the problems of the clinic will take the place, for the benefit of the whole class, of the method, employed at Copenhagen, where one of the city's judges serves as a "Chief of Bureau", to whom are referred every evening for decision, after argument by the lawyers in attendance, all doubtful questions presented by the members of the clinical staff. As Mr. von Briesen describes the procedure:

> "On specially difficult questions, several of the lawyers argue pro and con before the chief, who then renders the final decision.[9]

[9] 5 Legal Aid Review (1907), at p. 27.

The friction of minds in the analytical and "demonstration" work of the classroom, presided over by the clinical director or professor in charge, will not only naturally accomplish better results than those secured at Copenhagen, but will have the additional advantage of furnishing to the *students* the opportunity to participate in the argument of each case or question. Nothing could be better. There will be no "moot" work. All the business will consist of living problems and live issues. In the Minnesota clinic, there is a responsible supervisory committee to consider problems as they arise and to advise the attorney in charge.

For our purposes, we should secure such a general and unlimited practice *at the very outset,* in order to meet the immediate needs of a large class in the clinic at the moment of its opening. We cannot wait for a practice to grow and develop, because the clinic must be a success from the start. Students must have at once better opportunities and more work than they could possibly secure in the ordinary office. Discouragements and lack of facilities at the beginning might dampen the enthusiasm of students, and seriously injure the project in reputation and in their estimation. First impressions are of the utmost importance.

To this end, we must appeal to The Legal Aid Society, the Educational Alliance, the Y. M. C. A., the Y. W. C. A., and the other benevolent and charitable agencies, and must seek their earnest co-operation, with a view to securing for the clinic a very large proportion, if not the whole, of their legal aid work. Proper arrangements, financial and otherwise, as to office space, staff, etc., can readily be made, and it may be said, in particular, that there is no reason to doubt (it might be stated even more strongly) the sympathetic consideration of the matter by The Legal Aid Society. In fact, it is clear that Mr. von Briesen, its devoted president for twenty-five years, has long been prepared to welcome, as an important part of what he deems the society's work, the right kind of interest and participation by law school students, in connection with a proper official interest on the part of the law schools themselves.[10] Such a welcome of students would be based not merely on a desire to furnish them clinical experience, but also on the expectation that intimate contact with

[10] 5 Legal Aid Review, at pp. 26-27.

the cases and the sufferings of poor clients would be of infinite service in the development along right lines of personal character and the professional spirit. This assumes, however—what would doubtless be forthcoming—a genuine interest by the students as distinguished from the indifferent or purely perfunctory performance of mere duties required by a law school curriculum.

The professional work of The Legal Aid Society alone, especially if we include several of its offices, would give us immediately a very large and general assortment of cases, probably sufficient for all the pressing needs of the clinic. Students could easily be distributed among different offices. The society had the cases of over 40,000 clients in 1914, over 2,200 of which went into the courts.[11]

If, however, for any reason, The Legal Aid Society work and co-operation cannot be secured, an independent legal aid clinic must be built up with the assistance of the other charitable and public institutions, clubs and agencies, because, for reasons already stated, such work will furnish some of the best possible training. It is fair to assume that those students, even, who expect at once to lavish their splendid abilities and inexperience on corporation consolidations and reorganizations and on will contests involving millions, will have the good sense keenly to appreciate the value of the training, as such, and that even they will not slur such work as trivial.

The offices of the Corporation Counsel and the District Attorney may also be drawn upon for work and clinical opportunities.

Then, also, for additional opportunities, we must, if it be practicable, establish relations with some prominent down-town office, preferably one already having sympathetic ties with Columbia, which can be induced to transfer a part of its business and staff, perhaps the whole, to an office to be devoted to the purposes of the clinic and as a nucleus for other business which will be attracted to the clinic's office. The location of the office, from the standpoint of the clinic, is unimportant, except as a matter of expense, and it may be at the university itself, or at any other point, whether uptown or downtown, or the office may be divided

[11]Report of the Legal Aid Society of New York, for 1914, pp. 7; 49-50; 52-53.

between any two or more locations, as required by the controlling necessities of business and by other considerations. The prestige of the university will command serious consideration for this extraordinary proposition, which will also involve the securing of some part of the services of one or more partners and associates in such an office for the work of the clinic. The connection with such an office and its business is desirable, not merely in order to give added practical importance and solidity to the work of the clinic, and to make it, on that account, more generally inviting and interesting to students, but also for the purpose of furnishing the basis and facilities, already referred to, for the new paying business that will naturally come to the clinic's office.

If it is found to be impracticable for the university to establish such a connection with a down-town office (and perhaps whether it be established or not), the effort should be made (in addition to the legal aid work) to place clinic students in large numbers, during defined hours, in certain selected offices downtown, those of Columbia alumni to be preferred. Possibly, this would involve special financial arrangements to cover any necessary increase in clerical assistance and in office space for a "Students' Room," and also arrangements by which the work or cases assigned to students might become a part of the work of the clinic and subject to debate in the classroom. The clinic, its staff and students, would, in effect, become "of counsel." The support of the alumni will quickly open the doors of the necessary offices.

Arrangements should be made with the partners and managing clerks of the offices receiving clinic students for special attention and instruction to such students, even on the part of the partners themselves, and they and other managing clerks from the better offices, whose services may be enlisted, may also be called upon to serve in the general work of the clinic.

Evening sessions of the clinic, not only for legal aid work, but also for its general business, with the collaboration of some of the selected managing clerks and of some of the older members of the bar, may be arranged.

All open questions and all conflicts of opinion will be settled in the classroom, with such outside supervisory aid as circum-

stances may demand, or, if requiring immediate attention, will be determined by the professor or other person for the time being in charge of the clinic, with a possible subsequent review in the classroom.

The distribution and assignments of the students, and the adjustment of time-schedules and periods, of the compensation, if any, to be paid for services to the clinic, and also of students' fees for the clinical course—akin to the fees paid by students in England to barristers and solicitors, and supposed to cover special instruction—are all incidental, routine questions.

There should be a director of the clinic, or professor in general charge, with such assistants and supervisory committees as may be needed. He must be a general practitioner of large and varied experience, including modern business law as well as the older and more or less discarded branches, and a person fully prepared to devote himself permanently to the work, who can, with his assistants, agreeably to all concerned, associate himself, if necessary for temporary purposes, as counsel or otherwise, with any firm whose office or business may become connected with the clinic.

The courageous pioneering experience of Dean Vance in the Minnesota school has shown that, to guard against students' blunders, due to inexperience, and to furnish proper instruction, those in charge of clinical work must be not only competent lawyers, who will permanently, and not simply as a stop-gap, devote themselves to the work, but also "good teachers with unusual tact and judgment." These natural demands of the clinic, as well as proper supervisory advice and direction, which he also finds necessary, will all be met and provided for by the general plan here outlined.

This clinic of ours will also aim to *do all the legal work of the university,* in all its departments and branches, including all its outlying activities. In other words, it will become *the general counsel of the university.* This will interest the students.

In consideration of that service, and of the clinical service and instruction to the law school, the university, under a suitable working and financial arrangement with The Legal Aid Society and with such down-town law firms as shall associate themselves with the university and the work as proposed, shall furnish,

besides the professor or director in charge, and his assistants, the necessary floor space, equipment, and working force for the offices and classroom of the clinic, and such immediate working cash-capital as may be needed—for, after all, it must constantly be borne in mind that, while, like our medical friends, we are proposing to maintain accommodations for both general hospital work and private practice, with private patients, the clinic is, from the university standpoint, essentially and primarily a classroom of the school of law, destined, in its far-reaching opportunities and results, to be at least one of the most important in the school.

To aid the university in opening and maintaining the clinic, it may be desirable to raise a fund for "The Advancement and Support of Clinical Instruction in the Law." The financial burdens, however, may adjust themselves, very largely, inasmuch as proper fees will be charged for a part of the business of the clinic (especially for the ordinary paying business of the law office, as such), and the general financial arrangements, including those with any associated down-town firm, in consideration of the university's supplying, wholly or in part, the plant, equipment and working capital, will necessarily involve some eventual compensation, or rental return, to the university, measured by some proportionate amount of the fees collected. As the clinic prospers—as prosper it must, with anything like a fair amount of enthusiasm and support from its staff and from the students and alumni—this financial return, quite apart from students' fees, will prove to be most material. The moneys thus received can be used as a students' aid fund, and for scholarships, library extensions, and other school purposes, and for aiding in the enlargement of The Legal Aid Society's activities.

The prestige of the university and its legal clinic, as its *general counsel,* will in itself bring business to this clinical law office, just as in the case of an office known to be acting as general counsel for an important trust company or banking clientage. It will be possible to give some special and peculiarly expert attention to counsel work, including the preparation of briefs and the preparation and argument of appeals. Clients and outside lawyers will naturally feel exceptional confidence in the honesty, ability and general earnestness and trustworthiness of the clinic, its staff, and its work. It would be quite within the limitations and sanctions

of professional ethics and of a delicate and discriminating sense of professional propriety, even to ask for and solicit business for the purposes of such a clinic. Especially, for the sake of experience and for necessary clinical purposes, should business be sought from the title companies and the trust companies. Certainly, also, all alumni may be boldly and confidently appealed to for business and support of all sorts and in all ways. These various sources and considerations ought to yield and lead to much useful work.

There will be great advantages for the student in the studentship or clerkship served in such a clinic over the clerkship served in the ordinary law office in the ordinary way, in that he will, on the one hand, gain the constant and interested systematic attention, advice and instruction, with classroom work, already referred to, and, on the other, will to a great extent avoid the exaggerated and distracting commercial atmosphere, with specialized work, which, nowadays, necessarily prevails even in many of the best law offices. He will thus be able to substitute, for the comparatively narrowing and cramping influences of such constant surroundings, the benefits arising from the classroom work and "demonstrations" of the clinic, with its general unrestricted practice, and from the moral tone and professional spirit developed in contact with experienced lawyers possessing character and personality, who are devoting themselves to the betterment of their profession rather than to the sole end of "making a living" out of the law.

In due time, also—perhaps immediately—the courts and the bar examiners will naturally give *preferential consideration* to a clerkship served in a *clinic*. This must necessarily follow, because of its manifold advantages, some of which have been pointed out, over the disappointing, routine clerkship in an ordinary office. The court rules might properly provide for a *one-year* clerkship, to be served in the *clinical course* of a law school, as against a new requirement of *eighteen months or two years* in an *office*. The ordinary clerkship, as now served, is too short. Frequently, the whole year is practically thrown away.

As another advantage and encouragement, it will probably be practicable, in the case of specially efficient students, to remit law school dues for the third or fourth year, or to pay some compensation, in the same way, if not in the same degree, as stu-

dent-clerks are, prior to their admission to the bar, sometimes paid in ordinary down-town offices.

In addition, the clinic and the alumni committees, combined, will make it a business to find proper office connections for students, after admission to the bar.

To satisfy, for the present, the needs of students who, for any reason, cannot attend a law school or a law school clinic—a class of candidates for the bar which should be eliminated as quickly as possible—and at the same time to advance the clinical idea, the clerkship period in the ordinary office should be *increased,* as indicated, and by rule of court (under statutory authority, if need be) such lawyers as may be selected by the Appellate Divisions of the Supreme Court should be *required* to receive students and to furnish to them *genuine clinical opportunities and instruction.* Of course, such instruction could not approach that of the law-school clinic, with its classroom work, for systematic thoroughness and for variety in clinical opportunities. Nevertheless, such a rule would actually secure for that class of students reasonable instruction and experience, not now obtainable, and, as officers of the court, lawyers would be bound to respond.

One word more, as to rounding out the purposes of clinical instruction, and our task will be finished. It is of vital importance to the welfare of our profession that we restore professional solidarity among lawyers, and as between lawyers and students, by enlarging the opportunities for professional intercourse, and by promoting acquaintance and good fellowship among students and members of the bar. Time will not permit the development in detail of this suggestion in this memorandum. The general purpose should be to maintain professional contact and the professional spirit. Let students constantly be sent about as messengers among members of the bar, in the conduct of the business of the clinic and in general office work, and, above all, let the old custom of general bar meetings and occasional addresses be restored in generous measure, with provision for the *required attendance of students.* We all understand the difficulties, at the present day, in the promotion of such meetings and addresses. With the passing of the advocate, and the entrance of the hurrying, practical, commercial spirit, the incentive and much of the necessary aptitude and facility have been lost. There are no real

obstacles, however; it is only that the will and the disposition are lacking.

Finally, in further emphasizing our aim, let it be said that, in these days and in this community, we do not need a scientific legal education, or a scientific legal literature (whatever those terms may mean in a common-law country), so much as we do the cultivation, through the influence of the best practitioners, of correct professional instincts and the highest standards of professional honor. These can grow only in an atmosphere created by such practitioners, who are in daily touch with clients, in the actual administration of the law as a *living* force controlling the relations of *living* men. We need educational standardization, with higher educational standards, undoubtedly, but, at this moment, we need higher moral and professional standards far more. These are matters of the spirit, which cannot be taught. They can only be felt and absorbed, in experience, as constituent parts of character and personality, and, looking to the future welfare of our state and nation, it behooves us to see to it that hereafter they are acquired in larger measure before our students, of many nationalities, are thrust upon the community as fully equipped practitioners in the law, and as our executives, our legislators and our judges in embryo. That is our duty, and that is the high office and the special purpose of the legal clinic.

WILLIAM V. ROWE.

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